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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 150227200-5200-01]

RIN 0648-BE79

Fisheries Off West Coast States; West Coast Salmon Fisheries; Management Reference Point Updates for Three Stocks of Pacific Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes updates to management reference point values for Southern Oregon coastal Chinook salmon, Grays Harbor fall Chinook salmon, and Willapa Bay natural coho, as recommended by the Pacific Fishery Management Council (Council) for use in developing annual management measures beginning in 2015. This update is implemented as part of the 2014 methodology review where the Council and its advisory bodies considered new information on the three stocks of salmon to make a determination on whether changes to reference points for these stocks were warranted.

DATES: Comments on this proposed rule must be received on or before *[insert date 15 days after publication in FEDERAL REGISTER]*.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2015-0014, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2015-0014, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way N.E., Seattle, WA 98115-0070.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at 206-526-4323.

SUPPLEMENTARY INFORMATION:

Background

The Council manages West Coast ocean salmon fisheries under the Pacific Coast Salmon Fishery Management Plan (FMP). The FMP has long used stock-specific conservation objectives to manage fishery impacts to Council-managed salmon stocks. Conservation objectives are, generally, fixed quantities intended to provide the necessary guidance during the course of the annual preseason planning process to establish salmon fishing seasons that achieve optimum

yield. Under the FMP, conservation objectives can be added or changed either through a plan amendment or notice and comment rulemaking if a comprehensive technical review of the best scientific information available provides evidence that, in the view of the Salmon Technical Team (STT), Scientific and Statistical Committee (SSC), and the Council, justifies a modification (FMP section 3.2.2).

In 2009, NMFS amended the guidelines for National Standard 1 (NS1) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) at 50 CFR 600.310 to provide guidance on how to comply with new annual catch limit (ACL) and accountability measure requirements for ending overfishing of fisheries managed by Federal fishery management plans, including status determination criteria (SDC) (74 FR 3204). Amendment 16 to the FMP (76 FR 81851) defined a suite of reference points for salmon, consistent with the revised NS1 guidelines. In the FMP, SDC are defined in terms of quantifiable, biologically-based reference points, or population parameters, including: maximum sustainable yield (MSY), MSY fishing mortality rate (F_{MSY}), MSY spawner abundance (S_{MSY}), minimum stock size threshold (MSST), and maximum fishery mortality threshold (MFMT, generally equal to F_{MSY}). Under the FMP, changes to SDC can be made without a plan amendment if a comprehensive technical review of the best scientific information available provides evidence that, in the view of the STT, SSC, and the Council, a modification of the values of the SDC is justified (FMP section 3.1.7).

As part of the 2014 methodology review, the Council and its advisory bodies considered new information on three stocks of salmon (Southern Oregon coastal Chinook salmon, Grays Harbor fall Chinook salmon, and Willapa Bay natural coho) to make a determination on whether changes to reference points for these stocks were warranted. A joint methodology review was conducted by the STT, SSC, and the Model Evaluation Workgroup at the Council offices in

Portland, OR, October 21-23, 2014. The results of the methodology review were presented at the Council meeting in Costa Mesa, CA, November 12-19, 2014. Both the methodology review and the Council meeting were open to the public and were announced in the **Federal Register** (79 FR 59741, October 3, 2014 and 79 FR 63900, October 27, 2014). Documents considered by the Council are available on the Council website

(<http://www.pcouncil.org/resources/archives/briefing-books/november-2014-briefing-book/#salmonNov2014>). The Council transmitted their recommended changes to NMFS in a letter dated January 23, 2015. This proposed rule describes the reference point updates that are being proposed for implementation in the FMP in developing annual management measures beginning in 2015.

Southern Oregon Coastal Chinook Salmon

The Southern Oregon coastal Chinook salmon stock, a component of the Southern Oregon Northern California Chinook stock complex, is an aggregate of natural and hatchery fall and spring Chinook salmon populations in Oregon streams south of the Elk River (e.g., Rogue River, Pistol River, and Chetco River), plus spring Chinook salmon from the Umpqua River. Rogue River fall Chinook are used to indicate relative abundance of Southern Oregon coastal Chinook salmon. The current conservation objective for this stock is 60-90 fish per mile in three standard index areas. At the 2014 methodology review, the Oregon Department of Fish and Wildlife (ODFW) provided an analysis that was used by the State of Oregon in 2013 to adopt new State management objectives for Rogue River fall Chinook. The analysis used a Ricker spawner-recruit relationship for Rogue River fall Chinook that included smolt survival and mean summer flow covariates. ODFW proposed that the Council adopt their conservation objective and reference points for Southern Oregon coastal Chinook salmon in the FMP, while keeping this

stock as a component of the Southern Oregon Northern California stock complex (where Klamath River fall Chinook is the indicator stock). ODFW's spawner-recruit analysis resulted in an S_{MSY} point estimate of 34,992 and F_{MSY} of 54 percent. ODFW used the 75th percentile of the S_{MSY} posterior distribution (36,880 natural-area spawners) as an estimate of S_{MSY} to determine an MSST of 18,440 natural-origin spawners ($MSST = 0.5 * 36,880$). ODFW also proposed a stock conservation objective of 41,000 naturally-produced adults passing Huntley Park in the Rogue River, near Gold Beach, OR.

The STT and SSC evaluated ODFW's analysis and recommended that the Council adopt ODFW's proposed values as described above. The SSC recommended ODFW's proposed values for S_{MSY} and F_{MSY} but noted that the choice of MSST, above 50 percent of S_{MSY} , was a policy decision. Based on information from the 2014 methodology review and the advisory body recommendations, the Council adopted the following reference point value updates for southern Oregon coastal Chinook salmon and NMFS proposes to implement them:

- Conservation objective: 41,000 naturally-produced adults passing Huntley Park
- S_{MSY} 34,992 natural-area spawners
- MFMT (F_{MSY}): 54 percent
- MSST: 18,440 (20,500 measured at Huntley Park) natural-origin spawners

Grays Harbor Fall Chinook Salmon

During the 2014 methodology review, Washington Department of Fish and Wildlife (WDFW) staff presented a spawner-recruit analysis for Grays Harbor fall Chinook salmon. The analysis produced an estimated S_{MSY} of 13,326 for the Chehalis and Humptulips Rivers combined (9,753 and 3,573, respectively). This estimate is slightly lower than the current management objective of 14,600 natural-area spawners, which was adopted in 1979 based on available

spawning habitat. The new S_{MSY} estimate of 13,326 is currently being used by the Pacific Salmon Commission; adoption by the Council provides consistency between the FMP and the Pacific Salmon Treaty. The STT and SSC agreed that WDFW's estimate of S_{MSY} represents the best available science, and recommended that the Council adopt this estimate of S_{MSY} , and associated reference points developed by the STT, for the salmon FMP.

Based on information from the 2014 methodology review and the advisory body recommendations, the Council adopted the recommended stock productivity methodology and the resulting S_{MSY} value. However, the Council's action was not explicit with respect to the values for the associated reference points, specifically MSST and MFMT. The Council and NMFS use MSST to determine if a stock is overfished, and MFMT to determine if overfishing is occurring. Because it is necessary to make determinations as to whether the Grays Harbor fall Chinook salmon stock is overfished or experiencing overfishing in preparation for the development of the 2015 management measures, NMFS is proposing to implement values for MSST and MFMT based on the recommendations of the STT, pursuant to NMFS' independent rulemaking authority (18 U.S.C. 1855(d)). Should the Council choose to adopt a different value for MSST or MFMT, NMFS will determine the appropriate process for considering those values. The FMP states that MSST is generally defined as $0.5 * S_{MSY}$ or $0.75 * S_{MSY}$, although there are some exceptions. Currently, MSST for Grays Harbor fall Chinook is $MSST = 0.5 * S_{MSY}$. Applying the same approach to the proposed S_{MSY} value of 13,326 results in an MSST of 6,663 natural-area spawners. Applying the spawner-recruit parameter estimates from WDFW's analysis, as recommended by the STT as the best available science, yields an MFMT of 63 percent. Therefore, based on the recommendation of the Council and the advisory bodies, NMFS proposes the following reference point value updates for Grays Harbor fall Chinook salmon:

- Conservation objective: 13,326 spawners (equal to S_{MSY} , per FMP section 3.2.1)
- S_{MSY} : 13,326 spawners (9,753 in the Chehalis River and 3,573 in the Humptulips River)
- MFMT (F_{MSY}): 63 percent (application of WDFW's spawner-recruit analysis as recommended by the STT)
- MSST: 6,663 natural-area spawners ($MSST = 0.5 * S_{MSY}$) (application of current policy to updated S_{MSY}).

Willapa Bay Natural Coho

The Willapa Bay natural coho salmon stock was added to the FMP under Amendment 16, but without a conservation objective and other reference point values. WDFW's habitat-based escapement goal (i.e., adult salmon escaping the fishery to return to freshwater habitat for spawning) for this stock is 13,090 natural-origin fish. The STT performed a spawner-recruit analysis, which produced an estimated S_{MSY} of 17,200 natural-area spawners, and an F_{MSY} of 74 percent. The STT recommended that the Council adopt reference points for this stock based on this analysis. The STT's recommendation also included an MFMT of 74 percent, a MSST of 8,600 natural-area spawners ($MSST = 0.5 * S_{MSY}$), and annual catch limit calculated on the basis of $F_{ACL} = 0.95 * F_{MSY} = 71$ percent. The SSC supported these recommendations.

Based on information from the 2014 methodology review and the advisory body recommendations, the Council adopted the recommended stock productivity methodology and the resulting S_{MSY} and MFMT values. However, the Council's action was not explicit with respect to the value for MSST. The Council and NMFS use MSST to determine if a stock is overfished. Because it is necessary to determine whether the Willapa Bay natural coho stock is overfished, in preparation for the development of the 2015 management measures, NMFS is proposing to

implement a value for MSST based on the recommendations of the STT, pursuant to NMFS' independent rulemaking authority (18 U.S.C. 1855(d)). Should the Council choose to adopt a different value for MSST, it should confer with NMFS regarding the appropriate process for addressing this value. As noted above, the FMP states that MSST is generally defined as $0.5 * S_{MSY}$ or $0.75 * S_{MSY}$. The Council has generally applied a policy of $MSST = 0.5 * S_{MSY}$. Applying this approach to the proposed S_{MSY} value of 17,200 results in an MSST of 8,600 natural-area spawners. Therefore, based on the recommendation of the Council and the advisory bodies, NMFS proposes the following reference point values for Willapa Bay natural coho:

- Conservation objective: 17,200 natural-area spawners (equal to S_{MSY} , per FMP section 3.2.1)
- S_{MSY} : 17,200 natural-area spawners
- MFMT (F_{MSY}): 74 percent
- MSST: 8,600 natural-area spawners ($MSST = 0.5 * S_{MSY}$)

In addition, because Willapa Bay natural coho is not managed under an international agreement, listed under the ESA, or designated as a hatchery stock, the FMP requires that it be managed with an ACL (FMP sections 3.3.3 and 3.3.4). Because it is not part of a stock complex, it will be managed using an individual stock ACL. The Council and NMFS will determine the ACL annually, based on annual abundance projections and the appropriate formula set forth in the FMP (FMP section 3.3.4). Because the Council has recommended, and NMFS proposes to adopt, a directly estimated value for F_{MSY} , Willapa Bay natural coho is a Tier 1 stock for purposes of determining the acceptable biological catch (ABC) and the ACL. According to the FMP, for a Tier 1 stock, $F_{ABC} = F_{MSY} * 0.95$, $F_{ABC} = F_{ACL}$, and F_{ACL} is applied to the projected annual abundance to determine the ACL escapement level for the year (FMP sections 3.3.3 and 3.3.4).

As noted earlier, the Council is expected to address the reference points for Willapa Bay natural coho salmon that were not explicit in its prior action at its March meeting. It is possible that it could recommend values for MSST that are different from those proposed above. Were this to occur, the recommended values would likely be $0.75 * S_{MSY}$ or between that value and $0.5 * S_{MSY}$, based on the definition of MSST set forth in the FMP.

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pacific Salmon Fishery Management Plan, the MSA, and other applicable law, subject to further consideration after public comment. As described above, NMFS is proposing portions of this rule according to section 305(d) of the MSA.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The West Coast Regional Administrator has determined that the actions of this proposed rule qualify for categorical exclusion from further NEPA analysis under NAO 216-6.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The purpose of the Regulatory Flexibility Act (RFA) is to relieve small businesses, small organizations, and small governmental entities of burdensome regulations and record-keeping requirements. Major goals of the RFA are: (1) to increase agency awareness and understanding of the impact of their regulations on small business, (2) to require agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide

regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action. An initial regulatory flexibility analysis (IRFA) is conducted unless it is determined that an action will not have a “significant economic impact on a substantial number of small entities.”

The objective of this proposed rule is to update management reference points for three stocks of salmon under the FMP. This proposed rule would impact vessels harvesting salmon from the ocean troll fishery. The following fishery information is found in the Council’s Review of 2013 Ocean Salmon Fisheries Stock Assessment and Fisheries Evaluation Document. In 2013, there were 2,270 permits issued for this fishery, with a total ex-vessel value of \$34.1 million. Of the 2,270 permits, only 1,177 actually landed salmon all within the states of California, Oregon and Washington. In California, 670 vessels landed salmon for an ex-vessel value of \$23.6 million; in Oregon, 399 vessels landed salmon for an ex-vessel value of \$7.6 million; and in Washington, 108 vessels landed salmon for an ex-vessel value of \$2.8 million. Treaty Indian ocean fisheries landed salmon with an ex-vessel value of \$6.4 million.

On June 12, 2014, the Small Business Administration (SBA) issued an interim final rule revising the small business size standards for several industries effective July 14, 2014 (79 FR 33467 (June 12, 2014)). The rule increased the size standard from \$19.0 to \$20.5 million for finfish fishing, from \$5 to \$5.5 million for shellfish fishing, and from \$7.0 million to \$7.5 million for other marine fishing, for-hire businesses, and marinas. Based on this size standard, all 1,177 vessels that landed salmon from the ocean troll fishery are considered small under the Small Business Administration approved definition of a small fish harvester. Therefore, there are no disproportionate impacts between small and large vessels. Furthermore, there are no

disproportionate impacts based on homeport, gear type, or vessel size from the promulgation of this proposed rule.

This proposed rule would not result in any immediate impacts on revenues or costs for the small entities participating in the Pacific salmon fishery; the updated management reference point values will be considered within the overall suite of criteria that are used to frame the annual management measures. The management reference points are used to set Council management goals, identify when overfishing is occurring, and identify when a stock is overfished. These values all have the potential to impact how annual salmon management measures are structured, specifically what constraints are needed to manage impacts. However, the salmon fishery impacts a large number of stocks, and the fishery as a whole must be managed to meet management goals for every stock. Depending on abundance projections for a given year, meeting management goals for a few particularly limiting stocks typically results in fisheries that are not limited by management goals for the remaining stocks. Therefore, the proposed changes would only impact fishery revenues in years when any of the three affected salmon stocks are constraining to fisheries, which is unlikely based on historical data.

As a result, an IRFA is not required and none has been prepared. NMFS will conduct the appropriate analyses for any subsequent rulemakings stemming from this proposed rule.

This proposed rule would not establish any new reporting or recordkeeping requirements. This proposed rule does not include a collection of information. No Federal rules have been identified that duplicate, overlap, or conflict with this action.

This action is not expected to have adverse effects on any species listed under the Endangered Species Act (ESA) or designated critical habitat. This action modifies reference points used in the setting of annual management measures for West Coast salmon fisheries.

NMFS has current ESA biological opinions that cover fishing under annual regulations adopted under the FMP on all listed salmon species. NMFS reiterates their consultation standards for all ESA-listed salmon and steelhead species in their annual Guidance letter to the Council. Some of NMFS past biological opinions have found no jeopardy, and others have found jeopardy, but provided reasonable and prudent alternatives to avoid jeopardy. The annual management measures are designed to be consistent with the biological opinions that found no jeopardy, and with the reasonable and prudent alternatives in the jeopardy biological opinions. The Council's recommended management measures, which will be consistent with the reference points proposed here, therefore comply with NMFS' consultation standards and guidance for all listed salmon species which may be affected by Council fisheries. In some cases, the recommended measures are more restrictive than NMFS' ESA requirements.

In 2009, NMFS consulted on the effects of fishing under the Salmon FMP on the endangered Southern Resident Killer Whale Distinct Population Segment (SRKW) and concluded the salmon fisheries were not likely to jeopardize SRKW. Annual salmon management measures are designed to be consistent with the terms of that biological opinion.

This proposed rule was developed after meaningful collaboration with the affected tribes, through the Council process. Under the MSA at 16 U.S.C. 1852(b)(5), one of the voting members of the Council must be a representative of an Indian Tribe with Federally recognized fishing rights from the area of the Council's jurisdiction.

Authority: 16 U.S.C. 1801 et seq.

Dated: March 12, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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